

STATE OF MICHIGAN
COURT OF APPEALS

THERMON MOORE,

Plaintiff-Appellant,

v

FOURMIDABLE GROUP, d/b/a BAYVIEW
TOWER APARTMENTS, WILLIAM FOWLER
and DEBRA L. FOWLER,

Defendants-Appellees.

UNPUBLISHED

September 10, 1999

No. 210876

Muskegon Circuit Court

LC No. 98-038442 NO

Before: Markman, P.J., and Saad and P.D. Houk,* JJ.

MEMORANDUM.

Plaintiff appeals by right from the circuit court's order dismissing this tort action, without prejudice, based upon plaintiff's failure to post a \$2,500 bond as security for costs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Security for costs may be required when a case presents a tenuous legal theory of liability or where there is good reason to believe that the plaintiff's allegations, although they cannot be summarily dismissed under MCR 2.116, are nonetheless groundless and unwarranted. *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 270; 463 NW2d 254 (1990) (quoting *Flanagan v General Motors Corp*, 95 Mich App 677, 683; 291 NW2d 166 [1980]). Security may be waived if the plaintiff's pleading states a legitimate claim and the plaintiff shows by affidavit that he or she is financially unable to furnish a security bond. MCR 2.109(C)(1). The trial court's decision to require or waive security will not be reversed on appeal absent an abuse of discretion. *Hall, supra* at 270-271.

We find no abuse of discretion. Contrary to plaintiff's argument, the trial court was not obliged to accept the factual allegations of the complaint as true. While that would be the case if the court were deciding a summary disposition motion, it is not the case when the court determines whether security for costs should be required. Security may be required when there is good reason to believe a party's allegations are groundless and unwarranted, though the claims cannot be summarily dismissed under

* Circuit judge, sitting on the Court of Appeals by assignment.

MCR 2.116. *Hall, supra*. Here, there is ample reason to believe that plaintiff's claims may be groundless and unwarranted, given the nature of the allegations themselves, as well as defendant's prior litigation history, including the dismissal of defendant's previous lawsuit against defendants in federal court. Moreover, given the questionable legitimacy of plaintiff's claims, and plaintiff's failure to provide the lower court with any specific information regarding the amount of his income, assets and expenses, we are unpersuaded that the trial court abused its discretion in refusing to waive security based upon plaintiff's claim of indigency.

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk